

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>SAMANTHA SIVA KUMARAN, NEFERTITI RISK CAPITAL MANAGEMENT, LLC, NEFERTITI ASSET MANAGEMENT, LLC NEFERTITI HOLDING CORPORATION Plaintiffs,</p> <p>vs.</p> <p>Vision Financial Markets, LLC Howard Rothman, Robert Boshnack, High Ridge Holding Corporation, LLC High Ridge Futures, LLC H Rothman Family, LLC Boshnack Family, LLC Vision Brokerage Services, LLC John Felag, Vision Investment Advisors, LLC Lazzara Consulting, Inc, Gerard Stephen Lazzara, Julie Villa Defendants</p>	<p>Case No:1:20:CV:03871-GHW-SDA</p> <p>Related Case: 1:20:CV 03873 Related Case: 1:20:CV 03668</p> <p>MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT VILLA’S OBJECTION TO “MOTION TO WITHDRAW AS ATTORNEY OF RECORD”</p>
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**MEMORANDUM OF IN SUPPORT OF DEFENDANT VILLA’S OBJECTION TO
“MOTION TO WITHDRAW AS ATTORNEY OF RECORD”**

The “Motion to Withdraw As Attorney Of Record” (ECF #150) should be denied because counsel for Plaintiff’s named entities, Brian August, *inter alia* failed to confer and gain consent prior to filing his motion. This motion by default extends the court ordered deadline for Plaintiffs joint filing that is due February 25, 2022. The motion essentially reconstructs and delays the pending deadline facing Plaintiff’s counsel for named entities to file a joint reply in response to

Defendant's "Appeal To District Judge Of Decision At ECF129". Withdrawal is inappropriate and premature because of noncompliance with the Court's Order of February 12, 2022 (ECF No 146). For counsel to withdraw from a case he has already been absent from is particularly egregious at this time. It is a specious attempt to extend time and one more strategy in violation of the court's ORDER.

BACKGROUND

On February 11, 2022, only eleven calendar days as of this "Objection In Opposition To Withdrawal of Counsel", Brian August, counsel for named entities, participated on a telephonic conference call with all parties to this case being present. The court addressed the status of Plaintiff's "Appeal To District Judge Of Decision At ECF129" and District Judge Honorable Gregory H. Woods ordered Responses from all Defendant's due by Friday, February 18, 2022, and a joint reply from Plaintiff's to Defendant's Responses due on Friday, February 25, 2022. All parties agreed and consented to the deadlines. Attorney Brian August did not address any issues he was having with pro-se Plaintiff Kumaran at that time, nor did he raise any issues he was experiencing to the court at any time prior to the Defendant's timely filed Responses on February 18, 2022.

On February 22, 2022, Plaintiffs' counsel for named entities, Brian August, filed a *Motion to Withdraw* as counsel of record (ECF No. 150). In the Motion, counsel specified "The instant litigation is pre-discovery" but fails to state his responsibility to jointly file the court ordered Reply from counseled Plaintiff's to Defendant's Responses now due in 3 days, or if leave is granted to extend by 3 days, in 6 days. Defendant requests the court to compel attorney August to remain as counsel of record as appropriate to file the joint reply. At that time the case

is referred back to Magistrate Judge Stewart Aaron who will then be able to move forward with his rulings and decision on Defendant's pending motions.

RELEVANT LAW

Motion to Withdraw

Local Civil Rule 1.4 Withdrawal or Displacement of Attorney of Record provides in part

An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the Court and may not withdraw from a case without leave of the Court granted by order. Such an order may be granted only upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar, and whether or not the attorney is asserting a retaining or charging lien.

"When considering whether to grant a motion to be relieved as counsel, district courts analyze two factors: the reasons for withdrawal and the impact of the withdrawal on the timing of the proceeding." *Bruce Lee Enterprises, LLC v. A.V.E.L.A., Inc.*, No. 10 Civ. 2333, 2014 WL 1087934, at *1 (S.D.N.Y. Mar. 19, 2014) (internal quotation marks and citation omitted).

Granting counsel Brian August's motion will significantly affect the timing of this proceeding and the pending motion practice. Allowing withdrawal at this stage will prejudice Defendant by delaying resolution of the pending motion for Defendant Villa who is still waiting for a ruling on "Motion to Dismiss Plaintiff's Second Amended Complaint" pursuant to Fed. R. Civ. Proc. 12(B)(6), 8(a)(2) and 12(b)(1), or in the Alternative a decision on Summary Judgement Sua Sponte. These are dispositive motions and the courts in this circuit have denied motions to withdraw filed after the opposing party filed a dispositive motion—see *Hodges v.*

Attorney Gen. of U.S., 976 F. Supp. 2d 480, 488 n.8 (S.D.N.Y. 2013); Competitive Techs., Inc. v. Marcovitch, No. 3:07 Civ. 1327, 2008 WL 11381470, at *1 (D. Conn. Aug. 25, 2008).

Defendant will clearly be prejudiced by Brian August's withdrawal as counsel and the case may be delayed, if the honorable District Judge Douglas H. Woods does not refer the motions currently before the court back to Magistrate Judge Stewart Aaron for a decision and ruling on the pending motion(s), prior to the withdrawal of Attorney Brian August. Plaintiff Kumaran cannot continue pro-se on behalf of the named entities as previously determined by this court (ECF No. 13), dated August 20, 2020, and this case has already been protracted for almost two years.

The "Motion to Withdraw As Attorney Of Record" (ECF #150) should be denied

Request For (ECF #150) To Be Denied

For the reasons stated above, Defendant Villa requests Plaintiffs' counsel for named entities, Brian August's "Motion to Withdraw As Attorney Of Record" should be denied.

Dated: February 22, 2022

_____/s/ Julie Villa_____

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